



02 DEC 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Nate F. Scarpelli
MARSHALL, GERSTEIN & BORUN
233 South Wacker Drive
6300 Sears Tower
Chicago, IL 60606-6402

#6

In re Application of
BÄR, Kai K.O. et al
U.S. Application No.: 09/937,995
PCT No.: PCT/EP00/02773
Int. Filing Date: 29 March 2000
Priority Date: 01 April 1999
Attorney's Docket No.: 27428/37727
For: INFRARED IRRADIATION

DECISION
UNDER
37 CFR 1.181

This decision is in response to the papers filed 29 August 2002 which has been treated as a petition under 37 CFR 1.181. No fee is required.

BACKGROUND

On 08 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 indicating that the declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee of \$130.00 was required. A two-month time period for response was set.

On 20 December 2001, applicants purportedly submitted an executed declaration and surcharge fee.

On 28 August 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the Notification of Missing Requirements within the time period set.

On 29 August 2002, applicants submitted the instant petition which was accompanied by, *inter alia*, a copy of the response including an executed declaration purportedly mailed 20 December 2001, and authorization to charge any required fees to Deposit Account No. 13-2855.

DISCUSSION

In the instant response to the Notification of Abandonment mailed 28 August 2002, applicants filed "a copy of correspondence that was mailed to the USPTO (using a certificate of mailing under 37 C.F.R. 1.8) on December 20, 2001." This response also included a copy of a declaration in compliance with 37 CFR 1.497(a) and (b).

However, 37 CFR 1.8 merely allows for correspondence to be considered as timely filed if the correspondence is mailed or transmitted prior to expiration of the time period given in certain cases. 37 CFR 1.8 does not prove receipt of papers filed in the USPTO.

Section 503 of the MPEP lists procedures to ensure receipt of all papers filed in the USPTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicants have not provided a copy of the date-stamped filing receipt for the documents purportedly submitted 20 December 2001. Accordingly, applicants have not provided *prima facie* evidence that the declaration and surcharge fee were filed 20 December 2001. Moreover, a review of USPTO financial records for the above-captioned application does not show that the surcharge fee was received on 20 December 2001.

CONCLUSION

For the reason discussed above, the petition under 37 CFR 1.181 is DISMISSED. The application remains ABANDONED.

Applicants may wish to consider filing a petition under 37 CFR 1.137(a) or (b) requesting that the application be revived. Any such petition to revive or request for reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.


James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457